

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LETICIA CASTILLO
Claimant

VS.

TYSON FRESH MEATS, INC.
Self-Insured Respondent

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Docket No. 1,016,123

ORDER

Respondent requested review of the December 11, 2006 preliminary hearing Order Referring Claimant for Independent Medical Evaluation entered by Administrative Law Judge Brad E. Avery.

ISSUES

The Administrative Law Judge (ALJ) referred claimant for an independent medical examination (IME) and disability rating by Dr. Gary Baker. Dr. Baker was asked to render an opinion regarding what, if any, treatment is necessary to cure or relieve the effects of claimant's symptoms. Dr. Baker was also asked to render an opinion regarding what, if any, work restrictions are necessary. The order did not request an opinion regarding causation. Instead, the ALJ ordered that if Dr. Baker finds additional treatment is necessary, he is authorized to treat the claimant. If no additional treatment is necessary, Dr. Baker is asked to render an opinion concerning claimant's functional impairment. However, the ALJ's order goes on to say that the referral for an IME is "for evaluation and disability rating regarding an *alleged* work-related injury sustained by claimant *allegedly* with this respondent" ¹ (Emphasis added.) The order also requests that the doctor give his "opinions concerning apportionment of any pre-existing impairment of the affected body parts," ² but does not request an opinion as to any intervening accidents, injuries or aggravations such as claimant may have suffered at her subsequent employment.

¹ ALJ's Order Referring Claimant for Independent Medical Evaluation (Dec. 11, 2006) at 1.

² *Id.*

Respondent requests the Board reverse the ALJ's Award of additional medical treatment, arguing that claimant's current condition does not reflect an injury which arose out of and in the course of her employment with respondent.

Claimant argues that the testimony has shown that she received an injury while employed with respondent and that she still has pain and numbness in her bilateral upper extremities. Claimant believes she has carried her burden of proof, that the order of the ALJ should be affirmed, and that claimant should be provided medical treatment if Dr. Baker finds further treatment is necessary.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented to date, the undersigned Board Member makes the following findings of fact and conclusions of law:

Claimant began working for respondent on March 18, 2003. After being hired, she initially had some training that continued most of the month of April 2003. In May 2003 she began using a hook and a knife to cut fat off meat. While performing this job, she started having problems with her hands swelling. At first she did not see the nurse because she was afraid of losing her job, but she started having pain in her fingers that extended up into her forearms. She reported her condition to the plant nurse on June 6, 2003. Immediately upon reporting her condition, claimant was moved to a light duty job, and after that date she never again used a hook and knife while working for respondent. She only used the hook and knife for about four weeks while working at respondent.

Respondent sent claimant to see Dr. J. Robb Hutchison. Dr. Hutchison first saw claimant on July 1, 2003, and diagnosed her with tendinitis of the right 3rd and 4th fingers and tendinitis of the left 4th finger. He gave her restrictions of no pinching or pulling activity and told her to use splints on the right 3rd and 4th and left 4th fingers, to be worn day and night. He also prescribed an anti-inflammatory medication. Dr. Hutchison continued to see claimant through July, August and early September 2003. By July 29, 2003, claimant reported to him that her right hand was normal, but her left hand revealed a palpable nodule on the flexor tendon of the 4th finger. The left 4th finger also had snapping with flexion and extension of the finger. On September 2, 2003, Dr. Hutchison referred claimant to Dr. John Gilbert, an orthopedist.

Dr. Gilbert saw claimant on September 19, 2003. He diagnosed her with left ring trigger finger and recommended an injection of Xylocaine and Kenalog. X-rays taken of claimant's left ring finger were within normal limits for claimant's age. Dr. Gilbert again saw claimant on October 16, 2003, at which time claimant showed a full range of motion in her hand and fingers with no crepitation or popping. Dr. Gilbert released her to return to work at full duty with a permanent restriction from using a hook or knife.

Claimant was terminated from her employment at respondent on June 23, 2004. She was out of work for three or four months and then went to work for Hopkins Manufacturing (Hopkins). She testified that her job at Hopkins consists of pushing two buttons on a machine to put together brushes. When she is not putting the brushes together, she counts and packs the pieces. After the materials come out of the machine, she picks up the pieces and packs them in boxes. She testified that she works an average of four hours a day packing boxes of brushes.

Claimant saw Dr. Pedro Murati on June 14, 2005, at the request of her attorney. Dr. Murati's report indicates that claimant was complaining of bilateral hand pain with swelling and occasional numbness of her left ring finger. According to his records, claimant reported to Dr. Murati that she was employed by respondent for one and a half years as a brisket trimmer using a hook and knife. Obviously, this history is inconsistent with the actual time claimant performed these job duties for respondent. Claimant also told Dr. Murati that she started noticing pain and locking at her right middle and ring fingers and left ring fingers about July 1, 2003. Dr. Murati examined claimant and found no triggering at the left 4th finger. He did find that claimant had bilateral carpal tunnel syndrome. He opined that his current diagnoses as to claimant's conditions are within a reasonable medical probability a direct result of the work-related injury that occurred during her employment with respondent.

Claimant continues to feel the same pain and numbness in her hands and forearms as she did when working at respondent. She said the pain is still the same but is not getting any worse.

When claimant was released from medical treatment in October 2003, she did not report symptoms consistent with carpal tunnel syndrome, nor did any doctor diagnose carpal tunnel syndrome. Claimant had last performed work using a hook and knife in June 2003. She last worked for respondent in June 2004. Claimant was not diagnosed with carpal tunnel syndrome until June 2005 by Dr. Murati, who had never before examined or treated claimant. He related claimant's carpal tunnel syndrome condition to her employment with respondent based upon an inaccurate history that had her working with hooks and knives for a year and a half instead of only about four weeks. This Board Member finds Dr. Murati's opinion to lack a proper foundation in facts and thus to be not credible.

Claimant has failed to prove that her carpal tunnel syndrome condition is directly attributable to her employment with respondent. As such, the ALJ exceeded his jurisdiction in authorizing treatment for that condition. The ALJ, however, did not exceed his

jurisdiction in ordering an IME and, therefore, the remaining orders of the ALJ remain in full force and effect.³

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁵

WHEREFORE, it is the finding, decision and order of this Board Member that Administrative Law Judge Brad E. Avery's Order Referring Claimant for Independent Evaluation dated December 11, 2006, is reversed in part to deny claimant authorized medical treatment with Dr. Baker for carpal tunnel syndrome, but otherwise remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of February, 2007.

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge

³ Respondent acknowledges at page 6 of its brief to the Board that "[t]his appeal would not have been filed if the Administrative Law Judge had entered an Order for independent medical examination, only." It is only the ALJ's authorization of treatment to which respondent objects and which gives rise to the jurisdictional issue of compensability of the carpal tunnel syndrome.

⁴ K.S.A. 44-534a.

⁵ K.S.A. 44-555c(k).